EQUAL HUMAN WORTH?
A CRITIQUE OF CONTEMPORARY EGALITARIANISM

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (United Nations' Universal Declaration of Human Rights, 1948).

Theories of equal human rights have experienced an exponential growth during the past thirty or forty years. From declarations of human rights, such as the United Nations' Universal Declaration of Human Rights, to arguments about the rights of fetuses versus the rights of women, to claims and counter claims about the rights of minorities to preferential hiring, the rights of animals to life and well-being, and the rights of trees to be preserved, the proliferation of rights affects every phase of our socio-political discourse. Hardly a month goes by without a new book appearing on the subject.[1]

As J. L. Mackie used to say, "Rights are pleasant. They allow us to make claims of others. Duties are onerous. They obligate us to others." Rights threaten to replace responsibility as the central focal point of moral theory. But this need not be the case. A rights theory balanced by a strong sense of the social good and individual responsibility may well be the best kind of moral-political theory we can have.

Virtually the only candidate for a rights theory today is egalitarianism, at least with regard to rational human beings. While there are differences between contemporary egalitarian arguments, they all accept what Ronald Dworkin calls "the egalitarian plateau," the "deepest moral assumption" of our time, that each person is of equal intrinsic value, of "dignity" and thus ought to be treated with equal respect and be given equal rights.[2] The phrase, <u>dignity of the human person</u>, signifies in the words of Jacques Maritain, that "the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to [a person] because of the very fact that he is a [person]".[3] Will Kymlicka states that "Every plausible political theory has the same ultimate value, which is equality. They are `egalitarian

theories.'"[4]

Ronald Green says that egalitarianism is the presupposition for morality itself, the precondition of moral discourse and the necessary first assumption of any moral system, whatever its resultant values.[5] Political theories as diverse as Robert Nozick's Libertarianism, John Rawls' Liberalism, Peter Singer's Utilitarianism and Kai Nielsen's Marxism all share the notion that each person matters and matters equally.

What distinguishes most contemporary egalitarianism from earlier natural law models is its self-conscious secularism. There is no appeal to a God or a transcendental realm. Although Kant's doctrine of Ends ("Human beings qua rational have an inherent dignity and so ought to treat each other as ends and never merely as means") is the touchstone of most egalitarians, they generally distance themselves from the metaphysical grounding of Kant's doctrine. In the words of Dworkin, contemporary egalitarianism is "metaphysically unambitious."[6] Yet it may well be that without some deeper metaphysical underpinnings equal rights theories fail to persuade thoughtful persons.

If a deconstructed Kant is the father of contemporary egalitarians, their enemies are Aristotle and Thomas Hobbes. Aristotle thought that humans were essentially unequal, depending on their ability to reason. Hobbes rejected the notion of humans having any intrinsic worth at all. "The value or worth of a man is, as of all other things, his price -that is to say, so much as would be given for the use of his power - and therefore is not absolute but a thing dependent on the need and judgment of another."[7]

In this paper I want to examine the principal arguments for equal human rights given by contemporary egalitarians. Specifically, I want to explore the basis for attributing <u>equal worth</u> to all human beings or all minimally rational persons, since it is the doctrine of equal worth that undergirds most egalitarian theories of both rights and justice. In Part One I argue that in their present form none of the arguments given for the doctrine of equal human worth are sound. In Part Two I suggest that the doctrine of equal human worth has its home in a deeper metaphysical system than secular egalitarians are able to embrace: non-natural systems, not necessarily religious, but typically so. My conclusion is that on the secularist's naturalistic assumptions,

there is reason to give up egalitarianism altogether.

PART I Contemporary Secular Arguments for Equal Human Worth

Ten arguments (or strategies) for equal human rights based on equal human worth appear in current philosophical literature. They are: (1) The Presumption Argument; (2) The Properly Basic Belief Strategy; (3) The Existential Strategy; (4) The Libertarian Argument; (5) The Family Argument; (6) The Pragmatic Argument; (7) The Utilitarian Argument; (8) The Coherentist Argument; (9) The Rational Agency Argument; and (10) The Argument from Moral Personality. Let me briefly describe them and point out their deficiencies. I regret the cursory treatment of important theories, but my purpose is primarily to show how little attention has been paid to justifying the egalitarian plateau. Having until recently simply taken egalitarianism for granted, I now am puzzled by this idea or ideal and wonder whether it's simply a left over from a religious world view now rejected by all of the philosophers discussed in this essay. At any rate, my discussion is meant to be exploratory and provocative, not the final word on the subject.

(1) The Presumption of Equality Argument.

R. S. Peters, Stanley Benn, Monroe Beardsley, E. F. Carritt, and James Rachels interpret equal worth in terms of equal consideration or impartiality and argue that there is a presumption in favor of treating people equally. "All persons are to be treated alike, unless there are good reasons for treating them differently."[8] But there are problems. First of all, this type of egalitarianism is unduly formal. It lacks a material criterion or metric to guide deliberation. One might as well say that "all sentient beings should be treated alike, unless there are good reasons for treating them differently." The formula only shifts the focus onto the idea of good reasons. We need to know by virtue of what material criterion people are to be treated equally or differently. What are the material criteria? Need, effort, contribution, intelligence, sentience, self-consciousness, or moral merit? And if there is more than one, how do we weight them in various circumstances? As far as I know, the problem of material criteria has not been solved.

Plato's hierarchical theory and Aristotle's aristocracy could accommodate this formal notion of equality (treating equals equally and unequals unequally), and even Hitler could have used it to

justify his atrocities. Inegalitarians simply claim that there is a good reason for unequal treatment of human beings. They are of unequal worth.

The presumption of equality argument reduces to the notion of impartiality (what R. M. Hare calls "universalizability") and is not really an egalitarian argument at all. It makes no restrictions upon what reasons may be given to warrant inequalities. It merely prescribes that we not act arbitrary, but consistently. We should make our discriminations according to a proper standard, but doing so does not commit us to egalitarianism. For all rational action is governed by the idea of consistency.

Furthermore, there seems something arbitrary about the Presumption Argument. Why should we start off with a bias towards equality and not inequality? Why don't we have a principle presuming unequal treatment: "All persons are to be treated unequally unless there is some reason for treating them equally"? Neither a presumption of equality nor one of inequality is necessary, though there may be pragmatic or utilitarian considerations that incline us to opt for a presumption of equality rather than inequality. We will consider those strategies later.

2. The Properly Basic Belief Strategy.

Sometimes, no argument at all is given for the claim of equal human worth and the equal human rights that flow from it. Ronald Dworkin begins Taking Rights Seriously with a rejection of metaphysical assumptions.

> Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them. That characterization of a right is, of course, formal in the sense that it does not indicate what rights people have or guarantee, indeed, that they have any. But it does not suppose that rights have some special metaphysical character, and the theory defended in these essays therefore departs from older theories of rights that do rely on that supposition (p. xi, italics mine).

Nowhere in his book does Dworkin parse out the notion of "some reason" to override "collective goals." It is a given. The notion of equal human rights based on equal human worth simply becomes the assumption that replaces earlier religious or Kantian metaphysical assumptions. Every plausible political theory is egalitarian in that it holds that all members of the community have a right to equal concern and respect. "The Deepest Moral Assumption: the assumption of a natural right of all men and women to an equality of concern and respect, a right they possess not in virtue of birth or characteristic or merit or excellence but simply as human beings with the capacity to make plans and give justice."[9] In other words, we don't need to argue for this thesis. In a series of lengthy articles on welfare and resource egalitarianism Dworkin simply assumes the ideal of equality: that "people matter and matter equally."

Dworkins' view seems similar to what Alvin Plantinga calls "a properly basic belief," a foundational belief which doesn't need any further justification. But whatever merits this strategy has for religious beliefs, it seems unsatisfactory when employed to justify moral and political equality. At the very least, we should want to know why the capacity to "make plans and give justice" grants all and only humans equal concern and respect.

3. The Existential Strategy.

Closely related to Dworkins' view is Kai Nielsen's "Radical Egalitarianism", which holds that the ideal of equal human life prospects is something to which we arbitrarily, that is, existentially, choose to commit ourselves. It enjoins treating equal life prospects as both a goal to be aimed at and a right to be claimed, but one cannot rationally justify these commitments.

> Instead of putting out, "All people are of equal worth regardless of merit?" as some kind of mysterious truth-claim which appears in fact to be at best groundless and at worst false, would it not have been clearer and less evasive of the human-rights advocate simply to remark that he starts with a commitment on which he will not bend, namely a commitment to the treatment of all people as beings who are to have quite unforfeitably an equality of concern and respect? It is that sort of world that he or she most deeply desires and it is there that he stands pat. There are other equally intelligible and no doubt

> equally rational, moral points of view that do not contain such commitments. But it is with such a commitment that he takes his stand.[10]

Nielsen claims that it is "a great Kantian illusion" to think that one can or should justify our moral views through reason. These views are ultimate commitments, more basic than any of our other beliefs, so they are the grounds of belief which themselves cannot be justified, but must be chosen. That is where he distinguishes himself from Dworkin, who sees equality as a properly basic intuition.[11] Nielsen sees it as an existential and arbitrary choice. Nielsen continues:

> I do not know how anyone could show this belief to be true - to say nothing of showing it to be self-evident - or in any way prove it or show that if one is through and through rational, one must accept it.... A Nietzschean, a Benthamite, or even a classist amoralist who rejects it cannot thereby be shown to be irrational or even in any way necessarily to be diminished in his reason. It is a moral belief that I am committed to...[and which leads] to some...form of radical egalitarianism.[12]

In other words, equal human worth is a posit of secular faith, but a faith that seems to suffer from counter-examples: the apparent inequalities of abilities of every sort. Furthermore, many moral and political philosophers, myself included, believe that we can provide rational support our moral and political beliefs. Nothing Nielsen says shows why we must resort to arbitrary existential leaps, but if this is all that can be said for egalitarianism, then the inegalitarian is quite safe. Since he or she doesn't choose to make the leap of faith into the religion of egalitarianism, we have a stand-off. But such a stand-off is hardly compelling grounds for demanding universal human rights based on equal human worth.

These first three types of egalitarianism can hardly be called arguments at all. Presumption arguments simply presume, properly basic beliefs stipulate, and existential choices do not claim rational justification. These theories already suppose egalitarian foundations. We turn to more substantive efforts.

4. The Libertarian Argument.

At the other end of the political spectrum from Nielsen's Socialism with a rich panoply of positive welfare rights is the Libertarian idea that there is only one natural right: the negative equal right not to be interfered with. Robert Nozick, like Dworkin, simply assumes such a natural right. "Individuals have rights, and there are things no persons or groups may do to them (without violating their rights)." But unlike Dwrokin, Nozick believes that only the minimal state, which protects the individual "against force, theft, fraud, [the breaking] of contracts, and so on, is justified."[13] An equal and absolute right to self-ownership gives people an absolute right to their justly acquired property. Tibor Machan formulates the Libertarian position in this way: "In short, a just human community is one that first and foremost protects the individual's right to life and liberty--the sovereignty of human individuals to act without aggressive intrusion from other human beings."[14]

On the face of it, after the rhetoric of absolute rights to property is deflated (Nozick wrongly supposes that the notion of self-ownership entails this absolute right), Libertarian arguments come down to little more than the back side of an ultra-minimalist morality, one which sets up as its single principle: Do no unnecessary harm. But this by itself doesn't even distinguish humans from animals. We shouldn't cause harm to anyone without a moral justification.

Machan separates himself from Libertarians like Nozick, who does not offer arguments for natural rights, and John Hospers, who is a metaphysical determinist and grounds his political Libertarianism in metaphysical Libertarianism. For Machen it is our ability to act freely (contra-causally) that separates humans from other animals and gives us value.

This seems a promising move, a departure from the mainstream rejection of metaphysics, but it has problems. The first is that the Libertarian (contra- causal) notion of freedom seems mysterious and hard to argue for. It seems to presuppose a notion of the self that is metaphysically richer than the physicalist version held by most compatibilists; though if we grant a transcendent notion of agency, the Libertarian notion will be more promising. However, it will probably not be secular in the usual meaning of that term (as disclaiming a notion of the spiritual

or transcendent).

Secondly, even if the property of libertarian free will is granted, still if it has nothing to choose, it is of little practical value. By increasing a person's opportunities (through non-Libertarian institutions like public education and welfare economics) we enable free will to be exercised.

Thirdly, it seems that people are unequally free. Some people deliberate with great ease and accuracy, while others become muddled in emotion. Some choose according to the best reasons available, while others suffer from weakness of will. Some plan their lives according to long term goals and are able to execute those plans with consummate skill, while others are driven by circumstances, short term goals, and impulse. So Libertarianism is not obviously egalitarian. Even if we all possess some free will, we do not possess it equally.

There seems no reason on Libertarian premises to value all humans equally. Here David Gauthier's Libertarian theory of "morals by agreement" is more consistent with a secular world view. People do not have inherent moral value. Indeed, there are no objective values. Values are simply subjective preferences of different individuals, and the "moral artifice" is a merely a convention which is mutually advantageous. We refrain from coercing or harming, not because people have inherent equal dignity, but because it is not mutually advantageous to do so.[15]

5. The Family Metaphor.

Gregory Vlastos in his celebrated article "Justice and Equality," appeals to the metaphor of a `loving family' to defend his egalitarianism. Vlastos has us imagine that we are visited by a Martian unfamiliar with our customs who asks us why we hold to the ideal of equal human rights. Vlastos replies, "Because the human worth of all persons is equal, however unequal may be their merit."[16]

> The moral community is not a club from which members may be dropped for delinquency. Our morality does not provide for moral outcasts or half- castes. It does provide for punishment. But this takes place within the moral community and under its rules. It is for this reason that, for example, one has no right to be cruel to a cruel person.

> His offence against the moral law has not put him outside the law....The pain inflicted on him as punishment for his offence does not close out the reserve of goodwill on the part of all others which is his birthright as a human being; it is a limited withdrawal for it....[The] only justification [of human rights is] the value which persons have simply because they are person: their 'intrinsic value as individual human beings,' as Frankena calls it; the 'infinite value' or the 'sacredness' of their individuality, as others have called it (p. 48).

Vlastos distinguishes gradable or meritorious traits from non-gradable but valuable traits and says that talents, skills, character and personality belong to the gradable sort, but that our humanity is a non-gradable value. Regarding human worth all humans get equal grades. In this regard, human worth is like love. "Constancy of affection in the face of variations of merit is one of the surest tests of whether a parent does love a child." But the family metaphor, which is the closest Vlastos come to providing an argument for his position, needs further support. It is not obvious that all humans are related to each other as members of a family. If we're all brothers and sisters, who's the parent? By virtue of what property in human beings do we obtain value? Vlastos doesn't tell us. To the contrary, if we evolved from other animals, there no more reason to think that we are siblings to all humans than to think that we are siblings to apes and gorillas.

Note that Vlastos offers as evidence for equal worth the fact that "no one has a right to be cruel to a cruel person." But surely these are not evidences for equality, for we shouldn't be cruel - without justification - to anyone, animal or human. Aristotle, certainly no egalitarian, regarded cruelty as a vice.

Nor does the gradable - nongradable distinction make a difference here. There are nongradable properties: all members of the set of books or cats may possess the nongradable property of being equally books or cats, but we can still grade members with respect to specific interests or standards and say from the point of view of aesthetic value some books and cats are better than others. Likewise, we may agree that all homo sapiens equally are homo sapiens but insist that within that type there are important differences which include differences in value.

Some humans are highly moral, some moderately moral and others immoral. Why not make the relevant metric morality rather than species-membership? The point is that Vlastos has not grounded his claim of equal worth, or any worth for that matter, and until he does, his idea of the family connection remains a mere metaphor.

Finally, one must wonder at the sacerdotal language used of human beings: "sacred," of "infinite value," "inviolability," and so forth. The religious tone is not accidental, but the lack of reference to religion is a serious omission.

Suppose one of Vlastos's Martians, asks the egalitarian why he uses such language of mere animals. He invites Vlastos to consider Smith, a man of low morals and lower intelligence, who abuses his wife and children, who hates exercising or work, for who prefers pushpin to Pushkin, and whose supreme joy it is to spend his days as a couch potato, drinking beer, while watching mud wrestling, violent sports, and soap operas on TV. He is an avid voyeur, devoted to child pornography. He is devoid of intellectual curiosity, eschews science, politics, and religion, and eats and drinks in a manner more befitting a pig than a person. Smith lacks wit, grace, humor, technical skill, ambition, courage, self-control, and wisdom. He is anti-social, morose, lazy, a free-loader who feels no guilt about living on welfare, when he is perfectly able to work, has no social conscience and barely avoids getting caught for his petty thievery. He has no talents, makes no social contribution, lacks a moral sense, and from the perspective of the good of society, would be better off dead. But Smith is proud of one thing: that he is "sacred," of "infinite worth," of equal intrinsic value as Abraham Lincoln, Mother Teresa, Albert Schweitzer, the Delai Lama, Jesus Christ, Gandhi, and Einstein. He is inviolable - and proud of it - in spite of any deficiency of merit. From the egalitarian perspective, in spite of appearances to the contrary, Smith is of equal intrinsic worth as the best citizen in his community. We could excuse the Martian if he exhibited amazement at this incredible doctrine.

6. The Pragmatic (or Useful Attitude) Argument.

Joel Feinberg, who rejects Vlastos' essentialist position as unpromising, concedes that the notion of human worth is "not demonstrably justifiable." His support for the principle of equal

human worth seems based on a combination of existential commitment and pragmatic concerns.

> "Human worth" itself is best understood to name no property in the way that "strength" names strength and "redness" names redness. In attributing human worth to everyone we may be ascribing no property or set of qualities, but rather expressing an attitude - the attitude of respect -towards the humanity in each man's person. That attitude follows naturally from regarding everyone from the 'human point of view', but it is not grounded on anything more ultimate than itself, and it is not demonstrably justifiable.
>
> It can be argued further against the skeptics that a world with equal human rights is a more just world, a way of organizing society for which we would all opt if we were designing our institutions afresh in ignorance of the roles we might one day have to play in them. It is also a less dangerous world generally, and one with a more elevated and civilized tone. If none of this convinces the skeptic, we should turn our backs on him to examine more important problems.[17]

Feinberg may be correct in seeking to disentangle the concept of human worth from a property-view, but his position seems to have problems of its own. He needs to tell us why we should take the attitude of regarding every one as equally worthy. What is this peculiar "human point of view" which supposedly grounds the notion of equal human worth? His pragmatic justification (i.e., that it will result in a less dangerous world and a more elevated and civilized world) simply needs to be argued out, for it's not obvious that acting as if everyone were of equal worth would result in a less dangerous world than one in which we treated people according to some other criteria.

Feinberg's claim that a world with equal human rights based on equal worth "is a more just world" is simply question-begging, since it is exactly the notion of equal worth that is contested in the idea of justice. Formally, we are to treat equals equally and unequals unequally. Feinberg seems to be saying that justice consists in treating everyone as though they were equal whether or not they are.

But ignoring this and supposing that there were good utilitarian reasons to treat people as

though they were of equal worth, we would still want to know whether we really were of equal worth. If the evidence is not forthcoming, then the thesis of equal worth would have all the earmarks of Plato's Noble Lie, ironically, asserting the very contrary of the original. Whereas for Plato the Noble Lie specified that we are to teach people that they are really unequal in order to produce social stability in an aristocratic society, in Feinberg's version of the Noble Lie we are to teach people that they are all equal in order to bring social stability to a democratic society.

Feinberg's final comment, "If none of this convinces the skeptic, we should turn our backs on him to examine more important problems," signals a flight from the battle, an admission that the Emperor has no clothes, for what could be more important than setting the foundations of socio-political philosophy?

7. The Utilitarian Argument for Human Equality

According to Jeremy Bentham, the founder of classical utilitarianism, "Each [is] to count as one and no one to count as more than one." This principle individuates persons (and sentient beings) as locuses of utility, and the Utility Principle enjoins us to take everyone's utility function into consideration in the process of producing the highest net utility possible. But if this is all that is said, the alleged egalitarianism is spurious, for it is the net utility that is aimed at, not equal distribution of welfare or resources (except perchance that such a distribution would actually coincide with maximal utility). My ten hedons count as much as your, but what matters is the hedons, not you or I. While the initial measuring unit is the individual, the relevant goal is aggregative, ignoring any distribution pattern. If I can produce 100 more hedons by inegalitarian distribution schemes than by egalitarian ones, I should use the inegalitarian ones.

Utilitarian egalitarians, such as R. M. Hare, respond that the doctrine of diminishing marginal utility leads to egalitarian distribution schemes, because with respect to many goods, including money, their utility diminishes at the margin.[18] For example, redistributing $10 from a millionaire to a hungry person will increase net utility, for the hungry person will be able to sustain his life by what is a mere trifle to the millionaire. The idea is that since people are relevantly similar, egalitarian redistribution of wealth will tend to maximize utility.

The interesting feature of utilitarianism is that it doesn't need a deep theory of human nature to promote it's philosophy - all it needs is the thesis that humans are place holders for hedons and dolors (units of suffering). So this may be a way to get around the problem of grounding the worth of the self in something metaphysical. But this is an illusion. First of all, utility functions apply as much to animals as to humans. If cats or rats get more pleasure from humans for $10 worth of food or an artificial stimulation machine, we should redistribute wealth in favor of animals. Of course, utilitarians like Peter Singer would accept such otherwise counterintuitive implications of their theory.

But, more importantly, the doctrine of diminishing marginal utility has severe restrictions. The utility of money or other good does not invariably diminish at the margin and utility functions for all people are not the same. After a certain threshold point of subsistence needs, people's utility functions diverge radically. A monk needs far less than a corporate executive to meet his needs.

Furthermore, each unit of money (or whatever the good in question is) does not have the same function for each person. Some people, optimists and cheerful folk, are better converters of resources to utility than pessimists and morose people. Some are Stoics who are able to handle adversity nobly and overcome it through resolute courage and wisdom. On the other hand, some people, grumpy, greedy or masochistic may misuse resources to enhance their suffering.

Finally, there is a synergistic effect which causes the unit that crosses the threshold to make the difference between great utility and little or none at all. Frankfurt illustrates this point.

> Suppose that the cost of a serving of popcorn is the same as the cost of enough butter to make it delectable; and suppose that some rational consumer who adores buttered popcorn gets very little satisfaction from unbuttered popcorn, but that he nevertheless prefers it to butter alone. He will buy one and cannot buy both. Suppose now that this person's income increases so that he can buy the butter too. Then he can have something he enjoys enormously: his incremental income makes it possible for him not merely to buy butter in addition to popcorn, but to enjoy buttered popcorn. The satisfaction he will derive by combining the popcorn and the butter may well be considerably greater than the

sum of the satisfactions he can derive from the two goods taken separately. Here again, is a threshold effect.[19]

The Principle of Diminishing Marginal Utility is more a principle of utility than one of equality. Consider the following illustration from Frankfurt. Suppose ten people are starving and each one needs five units to survive. We have only 40 units of food. If we share it equally all will die, but if we distribute it unequally so that eight people get five units and two are left to die, we at least save eight people. Furthermore, suppose we have 41 units, the additional unit would not, on utilitarian grounds, go to one of the two who are dying, but to one of the surviving.

But there is an even deeper problem lurking in the background, and that is the problem of a justification of utility as the sole moral principle to guide our behavior. A problem arises when we apply the utilitarian calculus to competing interests. Suppose Aristotle needs slaves to do his manual labor so that he can carry on his philosophical contemplation. It is not in the slaves interest to be slaves to Aristotle, but if we can maximize utility by subjugating the interests of the slaves to the interests of the whole group (treating the slaves kindly, of course), what becomes of the utilitarian ideal of equal consideration of interests? Does he say to the slaves, "We considered your interests along with Aristotle's and the rest of society and concluded that on balance it's in all our interest that you stay slaves." Perhaps the same logic can be used to justify some of the harmful animal experiments that the utilitarian Peter Singer condemns in his book Animal Liberation. If this is so, it turns out that equal consideration of interests is simply a gloss for total utilitarian calculations in which individual rights are sacrificed for the good of the whole. We can still do the animal experiments if we anesthetize them first, so that they don't feel pain. But we may kill them and anyone else where net utility is expected.

Or suppose that I could create more utility by letting my children starve or go without books as I send my income to the starving people in Ethiopia or Bengla Desh or West Virginia. I don't see any reason to follow utilitarian prescriptions here. If we don't find utilitarianism a compelling theory, we certainly won't be tempted to take the doctrine of diminishing marginal utility as an overriding principle - even if it did guarantee egalitarian results.

8. The Coherentist Argument.

In a recent article, "On Not Needing to Justify Equality," Kai Nielsen derives a defense of egalitarianism from John Rawls' and Norman Daniels' method of wide reflective equilibrium - a method which aims at providing a fit between our moral theory and particular moral judgments, which results in an overall coherent account of morality. Nielsen claims that the method can be used to show that the principle of equal human worth and equal treatment are justified as part of an overall coherent account of morality.[20]

If an egalitarianism rights theory is to succeed, my guess is that it will be a coherentist theory of the kind that Nielsen adumbrates. But, as things stand, there are two criticisms of Nielsen's argument. First, at best we have only a promissory note for a coherent secular system where equal worth plays a legitimate role. That is, no one has set forth a naturalistic account of morality where human worth, let alone equal human worth, doesn't have an unduly ad hoc appearance. Secondly, Coherentist justifications in general are subject to the criticism of not tying into reality. A Nazi world view, a religious fundamentalist theology, and Nielsen's Marxist egalitarianism, not to mention fairy tales, are all coherent and internally consistent; but no more than one of these mutually incompatible world views can be correct. Coherence is a necessary but not sufficient condition for justification. We want to know by which criteria we can distinguish between coherent theories. In scientific theory building empirical observation and other theoretical constraints do this sort of work. But it would seem that the empirical and theoretical data we have count against the notion of equal worth, so that the kind of justification needed for secular egalitarianism is wanting.

9. The Rational Agency Argument.

The ninth attempt at getting a deeper argument for equal rights based on equal worth is found in the work of Alan Gewirth. In his book Reason and Morality, his essay, "Epistemology of Human Rights," and elsewhere, Gewirth argues that we can infer equal human rights to freedom and well-being from the notion of rational agency.[21] A broad outline of the argument is

as follows: Each rational agent must recognize that a measure of freedom and well-being is necessary for his or her exercise of rational agency. That is, each rational agent must will, if he is to will at all, that he possess that measure of freedom and well-being. Therefore anyone who holds that freedom and well-being are necessary for his exercise of rational agency, is logically committed to holding that he has a prudential right to these goods. By the principle of universalizability we obtain the conclusion that all rational agents have a prima facie right to freedom and well-being.

But Gewirth's argument is invalid. From the premise that I need freedom and well being in order to exercise my will nothing follows by itself concerning a right to freedom and well being. From the fact that I assert a prudential right to some x does not give anyone else a sufficient reason to grant me that x.

But even if we can make sense of Gewirth's argument, this doesn't give us a notion of equal human worth, but merely minimal equal prima facie rights to freedom and well-being, which could be overridden for other reasons. Inegalitarians like Aristotle could accept this kind of equal right and argue that the prima facie right to minimal freedom of action should be overridden either when the actions are irrational or when a hierarchically structured society has need of slaves, in which case those who were best suited to this role would have their prima facie right to free action suitably constrained. In like manner Utilitarians could accept Gewirthian equal prima facie rights and override them whenever greater utility was at stake. Gewirthian equal rights reduce to little more than recognizing that non-interference and well-being are values which we have a prima facie moral duty to promote whether in animals or angels, humans or Galacticans. They don't give us a set of thick natural rights.

Tom Nagel has set forth a version of Gewirth's Rational Agency Argument in his books A View from Nowhere and Equality and Partiality which may be more promising than Gewirth's own version in that it centers not on free action but on essential value viewed from an impersonal standpoint ("a view from nowhere").

> You cannot sustain an impersonal indifference to the things in your life which matter to you personally... But since the impersonal standpoint does not single you out from

> anyone else, the same must be true of the value arising in other lives. If you matter impersonally, so does everyone. We can usefully think of the values that go into the construction of a political theory as being revealed in a series of four stages, each of which depends on a moral response to an issue posed by what was revealed at the previous stage. At the first stage, the basic insight that appears from the impersonal standpoint is that everyone's life matters, and no one is more important in virtue of their greater value for others. But at the baseline of value in the lives of individuals, from which all higher-order inequalities of value must derive, everyone counts the same. For a given quality of whatever it is that's good or bad--suffering or happiness or fulfillment or frustration--its intrinsic impersonal value doesn't depend on whose it is.[22]

The argument goes like this.

1. I cannot help but value myself as a subject of positive and negative experiences (e.g., suffering, happiness, fulfillment or frustration).
2. All other humans are relevantly similar to me, subjects of positive and negative experiences.
3. Therefore, I must, on pain of contradiction, ascribe equal value to all other human beings.

Although this looks more promising than Gewirth's argument, it too is defective. First of all, it is not necessary to value oneself primarily as a possessor of the capacity for positive and negative experiences. Why cannot I value myself because of a complex of specific properties: excellence of skill, ability to engage in complex deliberation, rationality, discipline and self-control, industriousness, high integrity, athletic ability, creative and artistic talent, or quickness of wit without which I would not deem living worth the effort? I value myself more for actually <u>having</u> these properties than I do my <u>capacity</u> to suffer. These are what positively make up my happiness and give me a sense of worth - from the <u>impersonal</u> (i.e., impartial) point of view. If I were to lose any one of these properties, I, given my present identity, would value myself less than I do now. Should I lose enough of them my present self would view this future self as

lacking positive value altogether, and my future self might well agree. Should I become immoral, insane, or desperately disease ridden, I would be valueless and I hope I would die as swiftly as possible. So it follows that I am under no obligation to value everyone, since not everyone is moral, rational or healthy. there is no contradiction in failing to value the debauched Smith (section 5 above) or Rawls' blade of grass counter, the rapist or child molester, the retarded or the senile, since they lack the necessary qualities in question. Furthermore, I may value people in degrees, according to the extent that they exhibit the set of positive qualities.

So, letting these positive values be called "traits T," we need to revise the first premise to read:

1A. I cannot help but value myself as the possessor of a set of traits T.

But then 2 becomes false - all other human beings are not relevantly similar to me in this regard. And so, Nagel's conclusion does not follow, I don't contradict myself in failing to value people who lack the relevant qualities.

There is a second problem with Nagel's argument. It rests too heavily on the agent's judgment about himself. "If you matter impersonally, so does everyone." There are two ways to invalidate this conditional. The conditional won't go through if you don't value yourself. If I am sick of life and believe that I don't matter, then, on Nagel's premises, I have no reason to value anyone else. Secondly, I may deny the consequent and thereby reject the antecedent. I may come to believe that no one else does matter and then be forced to acknowledge that I don't matter either. We're all equal--equally worthless. If reflection has any force, Nagel's first premise (i.e., I cannot help but value myself as a subject of positive and negative experiences) seems false. People cease to value themselves when they lose the things which give life meaning.

Thirdly, note the consequentialist tone of the last two sentences of Nagel's statement: "...at the baseline of value in the lives of individuals, from which all higher order inequalities of value must derive, everyone counts the same. For a given quantity of whatever it is that's good or bad - suffering or happiness or fulfillment or frustration - its intrinsic impersonal value doesn't depend on whose it is." We hear the echo of Bentham's "each one to count for one and no one for more than one" in this passage. But Nagel, like Bentham before him, cannot both be a maximizer

and an egalitarian. If it is happiness that really is the good to be maximized or suffering to be minimized, then individuals are mere place holders for these qualities, so that if we can maximize happiness (or minimize suffering) by subordinating some individuals to others, we should do so. If A can derive 10 hedons by eliminating B and C who together can only obtain 8 hedons, it would be a good thing for A to kill B and C. If it turns out that a pig satisfied really is happier than Socrates dissatisfied, then we ought to value the pig's life more than Socrates, and if a lot of people are miserable and are making others miserable, we would improve the total happiness of the world by killing them.

I for one confess that I don't care whether cats thrive more than mice or whether all cats are equally prosperous. No one I know cares about this either. But from Nagel's impersonal "View from Nowhere," shouldn't we care as much about them, since cats and mice are subjects to positive and negative experiences - pleasures and suffering? How, on Nagel's premises are humans--themselves animals--intrinsically better than cats and mice? I can appreciate it if a religious person responds that humans are endowed with the image of God, but Nagel, not being religious, can't use this response. Why should I care that all humans are equally happy anymore than I care whether all cats or mice are equally happy and as equally happy as humans? If the question is absurd, I'd like to know why. Do not misunderstand me, I don't want to harm anyone without moral justification, but I don't see any moral reason to treat all humans, let alone all animals, with equal respect.

10. The Argument from Moral Personality

No exposition of egalitarianism has had a greater influence on our generation than John Rawls' A Theory of Justice, which Robert Nisbet has called "the long awaited successor to Rousseau's Social Contract...the Rock on which the Church of Equality can properly be founded in our time."[23] Rawls sets forth a hypothetical contract theory in which the bargainers go behind a veil of ignorance in order to devise a set of fundamental agreements that are fair.

> First of all no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and the like. Nor, again, does anyone know his conception of the good, the particulars of his

> rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve. The persons in the original position have no information as to which generation they belong (p. 137).

By denying individuals knowledge of their natural assets and social position Rawls prevents them from exploiting their advantages, thus transforming a decision under risk (where probabilities of outcomes are known) to a decision under uncertainty (where probabilities are not known). To the question, why should the individual acknowledge the principles chosen as morally binding? Rawls would answer, "We should abide by these principles because we all chose them under fair conditions." That is, the rules and rights chosen by fair procedures are themselves fair, since these procedures take full account of our moral nature as equally capable of "doing justice." The two principles that would be chosen, Rawls argues, are (1) everyone will have an equal right to equal basic liberties and (2) social and economic inequalities must satisfy two conditions: (a) they are to attach to positions open to all under conditions of fair equality of opportunity; and (b) they must serve the greatest advantage of the least advantaged members of society (the difference principle).

Michael Sandel has criticized Rawls' project as lacking a notion of intrinsic worth. "Rawls' principles do not mention moral desert because, strictly speaking, no one can be said to deserve anything... On Rawls' view people have no intrinsic worth, no worth that is intrinsic in the sense that it is theirs prior to or independent of... what just institutions attribute to them."[24]

Although Rawls sometimes lays himself open to this kind of charge, I think that Sandel is wrong here. What grounds Rawls' social contract is a Kantian humanism.

> Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the

> sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by the many. Therefore, in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or the calculus of social interests (p. 3f).

At the center of Rawls' project is a respect for the individual as "inviolable," sacred, whose essential rights are inalienable. In Section 77 of A Theory of Justice this inviolability is grounded in our having "the capacity for moral personality," that is, the ability to enter into moral deliberation. "It is precisely the moral persons who are entitled to equal justice. Moral persons are distinguished by two features: first they are capable of having...a conception of the good; and second they are capable of having...a sense of justice....One should observe that moral personality is here defined as a potentiality that is ordinarily realized in due course. It is this potentiality which brings the claims of justice into play" [25].

Members in the original position are not mere utilitarian containers of the good but Kantian "ends in themselves," who are worthy of "equal concern and respect." Rawls already presupposes equal and positive worth at the very beginning of his project. The question is, is this assumption reasonable? Is Rawls' egalitarian starting point justified? I think not. Given the framework in which Rawls writes there is no reason to suppose that we have intrinsic and equal value. Let me explain.

A standard criticism of A Theory of Justice is that it fails to take into account the conservative who, as is a gambler, would rather take his chances on a meritocratic or hierarchical society and so reject part or all of Rawls' second principle. I think that this objection is even stronger than has been made out, for it is not simply as a gambler that the conservative will self-interestedly choose meritocracy, but rather because he or she deems it the essence of justice.

This point becomes highlighted when we examine Rawls' threshold principle. "Once a certain minimum is met, a person is entitled to equal liberty on a par with everyone else" (p. 506). This move seems ad hoc. There is no obvious reason why we should opt for tacit equal status (let alone inviolability) rather than an Aristotelian hierarchical structure based on

differential ability to reason or deliberate. Even as some life plans are objectively better than others, so some people might well be considered more worthy than others and treated accordingly.

Why would it be wrong to weight the votes behind the veil of ignorance according to criteria of assessment? For example, the deeply reflective with low time preferences would be given more votes than the less reflective with high time preference. Those with high grades might get four or five votes whereas the minimally reflective might get only one vote. Why have only one threshold between those who pass and those who fail the rationality test, as Rawls proposes? Why not have five or six thresholds?

With different layers of weighted votes one would still expect a benevolent society, but the difference principle might well be replaced by Harsanyi's average utility principle or Frankfurt's sufficiency principle, permitting hierarchical arrangements.[26] Rawls' first principle (maximum liberty) and the first half of the second principle (equal opportunity) would very likely result in a hierarchical, elitist society.

Normally we think that each person has a right - based on freedom and moral worth (the very principles Rawls embraces) - to develop his or her capacities and talents and extend one's goals higher and higher. Suppose that I love to travel for both enjoyment and educational purposes. I use the knowledge I receive for education purposes, including writing books, for which I receive generous royalties. Even though I give more than average to charity, I still end up with vastly more wealth than the average person, and thus am enabled to buy more books, do more travelling, and enjoy the good things of life several times that of the average person. Presumably, I am violating the Equality Principle of only having as much resources (or welfare) as the average person. But this seems counterintuitive. In economics the Pareto Principle of Optimality prescribes that an agent should maximize his own welfare so long as no one is thereby made (unjustly) worse off. Either the Pareto Principle is illegitimate and we are not allowed to advance our interests while others have less or the Equality Principle is mistaken and we may advance our interests even when it brings us to a position where we are far better off than others.

But we may go even further than the Pareto Principle. Even if my fulfilling my goals leaves others worse off, that still may not be wrong. Drawing on an illustration from Nozick, suppose that my marrying the most beautiful woman in my community leaves twenty rival suitors is abject despair, on the brink of suicide. Even though each of them is worse off, I am justified in using my superior talents to win my beloved and thus end up in a far better position than my despairing rivals. The situation is unequal, but not unjust.

What would Rawls say to these criticisms? Why does he hold on to a principle of equal intrinsic worth? The closest Rawls comes to addressing this question is gets us back to his self-respect argument, discussed in section 8. Self-respect, according to Rawls, is a fundamental human need which his theory satisfies and which hierarchical arrangements fail to satisfy. But we have already seen that this is severely problematic.

It is note worthy that these matters are not addressed in Rawls' second book Political Liberalism.

Counter-Evidence to Egalitarianism: The Empirical Consideration

Contrary to egalitarians there is good reason to believe that humans are not of equal worth. Given the empirical observation, it is hard to believe that humans are equal in any way at all. We all seem to have vastly different levels of abilities. Some, like Aristotle, Newton, Shakespeare, and Einstein are very intelligent; others are imbeciles and idiots. Some are wise like Socrates and Abraham Lincoln; others are very foolish. Some have great powers of foresight and are able to defer gratification, while others can hardly assess their present circumstances, gamble away their future, succumb to immediate gratification and generally go through life as through a fog. For the perspective of the moral point of view, it looks like Einstein, Gandhi and Mother Teresa have more value than Jack-the-Ripper or Adolf Hitler. If a research scientist with the cure for cancer is on the same raft with an ordinary person, there is no doubt about who should be saved on the basis of functional value.

Take any capacity or ability you like: reason, a good will, the capacity to suffer, the ability to deliberate and choose freely, the ability to make moral decisions and carry them out,

self-control, sense of humor, health, athletic and artistic ability, and it seems that humans (not to mention animals) differ in the degree to which they have those capacities and abilities.

Furthermore, given the purely secular version of the theory of evolution, there doesn't seem to be any reason to believe that the family metaphor, supposed by philosophers like Vlastos and the United Nations' Declaration on Human Rights (see the beginning of this paper), has much evidence in its favor. If we're simply a product of blind evolutionary chance and necessity, it is hard to see where the family connection comes in. Who is the parent? In fact, given a naturalistic account of the origins of homo sapiens, it is hard to see that humans have intrinsic value at all. If we are simply physicalist constructions, where does intrinsic value emerge?

Of course, most, if not all of the egalitarians discussed above, recognize this empirical consideration. The point is that the empirical problem seems to place its own burden of proof on any theory that would claim that equal rights are based on equal human worth. As far as I can see, none have countered the presumption of inequality.

PART II **The Metaphysical Origins of the Idea of Equal Worth**:

Our Judeo-Christian Tradition

The doctrine that all people are of equal worth, and thus endowed with inalienable rights, is rooted in our religious heritage. The language of human dignity and worth implies a great family in which a benevolent and sovereign Father binds together all his children in love and justice. The originators of rights language presupposed a theistic world view, and secular advocates of equal rights are, to cite Tolstoy, like children who see beautiful flowers, grab them, break them at their stems, and try to transplant them without their roots. The egalitarian assertions of the United Nations' Universal Declaration of Human Rights are similar to those of our Declaration of Independence with one important difference - God is left out of the former; but that makes all the difference. That posit (or some metaphysical idea which will support equal and positive worth) is not just an ugly appendage or a pious afterthought but a root necessary for the bloom of rights.

While the thesis of equal human worth may not have been clearly recognized, let alone

embraced, by ancient Israel or in all Jewish and Christian quarters, the Jewish prophetic tradition and much of the Christian tradition, supports this thesis. In such texts as the first three chapters of Genesis, which speak of God creating man and woman in His image, as "good;" in Malachi 2:10, where the prophet writes, "Have we not all one Father? Has not one God created us? Why then are we faithless to one another?" and in Psalm 8: 3-6, where the Psalmist asks, "When I look at thy heavens, the work of thy fingers, the moon and the stars which thou has established: What is man that thou are mindful of him, or the son of man that thou does care for him?" and answers his own question, "Thou hast made him a little less than God, and dost crown him with glory and honor. Thou has given him dominion over the works of thy hands; thou has put all things under his feet." The prophets Amos, Micah, and Isaiah, speak of God's concern being universal and of a coming universal kingdom wherein all people enjoy peace and prosperity.[27]

In the New Testament and in the early Christian church there are strains which point to the thesis that all humans are loved equally by God and are equally accountable to him for their actions. The moral law is revealed to each person, so that each will be judged according to his or her moral merit (Romans 2). Still, even the sinner is of incalculable worth; like a corroded and distorted coin of the royal mint, he or she still bears the King's image.

Of course, in itself theism is no guarantee of equal worth, for God could have created people unequal. The argument implicit in the Judeo-Christian tradition seems to be that God is the ultimate value and that humans derive their value by being created in his image and likeness. To paraphrase the Psalmist, we are a little lower than God, mini-gods the Hebrew seems to suggest. With regard to possessing intrinsic value we all get equal grades.

There are two arguments for equal human worth which I find implicit in the Judeo-Christian tradition: the Essentialist Argument and the Argument from Grace. The Essentialist Argument goes like this: God created all humans with an equal amount of some property P, which constitutes high value. The property may be a natural or a non-natural one. If it is a natural property, then conceivably we could discover it and act upon it without needing God to reveal it. If it a non-natural property, the only reason to suppose that we possess it is that our theory says we do. The fact that we cannot identify it constitutes some evidence against the theory itself, but

if there are good reasons to accept the theory as a whole, one might be content to live humbly with this mystery. Since no empirical quality is had by all humans in the same quantity, the naturalistic picture seems foreclosed and the non-natural one wins by default.

The second argument which I find in the Judeo-Christian tradition is the Argument from Grace. Strictly speaking it is not an egalitarian argument, if egalitarianism means that each person has equal intrinsic worth. Here the actual value may be different in different people but grace compensates the differences. It raises the worst off until they are equal with the best off.

The Argument from Grace often makes use of the family metaphor, such as we find in Vlastos' article (above) - only in this case the family has a parent. God is the Heavenly Father, and we are all family, brothers and sisters to one another. As our Father, God loves us each equally and unconditionally, and wants his children to love each other. Each person does matter and matter equally, but not because of some innate property, but simply by virtue of God's gracious love.

The meaning of the Sermon on the Mount with its prescriptions to love even one's enemies, the Parable of the Good Samaritan, which enjoins recognizing people of despised groups as capable of moral grandeur, the Parable of the Prodigal Son, which teaches us to forgive and restore lost causes; is that God's grace triumphs over human difference, both moral and nonmoral, and raises each of us to an equal pinnacle of sanctity and dignity.

The Argument from Grace is a version of the divine command theory of ethics, though it does not entail reducing all morality to divine commands. Some moral duties may be based on human nature, while the duty to equal concern for the welfare of all persons may be a product of God's command. That is, morality may be a combination of divine commands and rational discoveries.

These two arguments can stand separately or together in making a case for the thesis of equal human rights based on equal human worth. That is, it is the God-relationship that provides the metaphysical basis for this thesis, whether the equality comes in at creation or whether it is due to grace.

Of course, I do not mean to imply that the Judeo-Christian tradition is the only logical

basis for a doctrine of equal worth. I am simply pointing to the historic origins of our perspective. One could opt for a Stoic panentheism which maintains that all humans have within them a part of God, the logos spermatikos (the divinely rational seed). We are all part of God, chips off the old divine block, as it were. Other religious traditions, such as the Islamic and Hindu also have a notion of the divine origins and high worth of humanity. Perhaps a version of a Platonic system could do the trick as well.

The possibilities are frighteningly innumerable. My point is that you need some metaphysical explanation to ground the doctrine of equal worth, if it is to serve as a basis for equal human rights. It is not enough simply to assert, as philosophers like Dworkin do, that their egalitarian doctrines are "metaphysically unambitious." But, of course, there are severe epistemological difficulties with the kinds of metaphysical systems I have been discussing. My point has not been to defend religion. For purposes of this paper I am neutral on the question of whether any religion is true. Rather my purpose is show that we can't burn our bridges and still drive mack trucks over them. But, if we can't return to religion, then it would seem perhaps we should abandon egalitarianism and devise political philosophies that reflect naturalistic assumptions, theories which are forthright in viewing humans as differentially talented animals who must get on together.

Conclusion

Secular egalitarian arguments for equal rights seem, at best, to be based on a posit of faith that all humans are of equal worth or that it is useful to regard them as such. They have not offered plausible reasons for their thesis, and, given the empirical consideration, inegalitarianism seems plausible. If my analysis of the subject is confirmed by fuller arguments, then there are only two choices for egalitarians and the rest of us: either secular inegalitarian moral/political systems or religious (or comparable metaphysical) systems.

I have suggested that secular egalitarians have inherited a notion of inviolability or intrinsic human worth from a religious tradition which they no longer espouse. The question is whether the kind of democratic ideals that egalitarians espouse can do without a religious

tradition. If it cannot, then egalitarians may be living off the borrowed interest of a religious metaphysic, which (in their eyes) has gone bankrupt. The question is: Where's the capital?[28]

Endnotes

1. Among the most prominent recent works on equal human rights are: John Baker, Arguing for Equality (Verso, 1987); Maurice Cranston, What are Human Rights? (Taplinger, 1973); J. Finnis, Natural Law and Natural Rights (Clarendon Press, 1980); Alan Gewirth, Human Rights (University of Chicago, 1982); Ronald Dworkin, Taking Rights Seriously (Harvard University, 1977); Will Kymlicka, Contemporary Political Philosophy: An Introduction (Oxford University, 1990); Rex Martin, Rawls and Rights (University of Kansas, 1985); Tibor Machan, Individual Rights (Open Court, 1989); James Nickel, Making Sense of Human Rights (University of California, 1987); Ellen Frankl Paul, Fred Miller, and Jeffrey Paul, eds., Human Rights (Basil Blackwell, 1984); Robert Nozick, Anarchy, State and Utopia (Basic Books, 1974); John Rawls, A Theory of Justice (Harvard, 1971); Jeremy Waldron, ed., Theories of Rights (Oxford University, 1984); Carl Wellman, A Theory of Rights (Rowman and Allenheld, 1985) and Morton E. Winston, ed., The Philosophy of Human Rights (Wadsworth, 1989).

2. Ronald Dworkin, "The Original Position," University of Chicago Law Review, 40, no. 3 (Spring 1973):532].

3. Jacques Maritain, The Rights of Man, (London, 1944) p. 37. For a good introduction to the significance of human rights see the introduction and readings in The Philosophies of Human Rights, ed. Morton Winston (Wadsworth, 1989). Mortimer Adler's statement is representative of contemporary egalitarians: "All human beings are equal as human. Being equal as humans, they are equal in the rights that arise from needs inherent in their common human nature. A constitution is not just if it does not treat equals equally. Nor is it just if it does not recognize the equal right of all to freedom - to be ruled as human beings should be ruled, as citizens, not as slaves or subjects." Aristotle for Everybody (Bantam, 1978), p. 114.

4. Will Kymlicka, Contemporary Political Philosophy (Oxford University Press, 1989), p. 4. Inegalitarianism is often dismissed as a crackpot idea that no self-respecting person would

seriously consider. In another work, as though to apply the coup de grace to inegalitarianism, Kymplicka notes, "Some theories, like Nazism, deny that each person matters equally. But such theories do not merit serious consideration." (Liberalism, Community and Culture (Oxford University Press, 1989), p. 40. In The End of Equality (Basic Books, 1992), Mickey Kaus writes, "I confess I had forgotten that social inegalitarians still existed in this country. Since writing the book I have encountered a few lively specimens. Still, I have confidence that they remain a small minority" (p. viii).

5. Ronald Green, Morality and Religion (Oxford University Press, 1988), p. 140. I have challenged Green's idea of moral equality in my article "Equality: The Concept and its Conceptions" in Behavior and Philosophy (forthcoming).

6. Ronald Dworkin, "The Original Position" University of Chicago Law Review, 40, no. 3 (Spring 1973): 532.

7. Thomas Hobbes, Leviathan (Bobbs-Merrill, 1958), ch. 10, p. 79f.

8. R. S. Peters and S. I. Benn, Social Principles and the Democratic State (George Allen and Unwin, 1959) ch 5; R. S. Peters, "Equality and Education," S. I. Benn and R. S. Peters, ""Justice and Equality," and Monroe Beardsley, "Equality and Obedience to Law" all in The Concept of Equality, W. T. Blackstone, ed. (Burgess Publishing Company, 1960). Benn and Peters recognize the negative character of their definition and appeal to the principle of relevance to fill in the positive content (Social Principles and the Democratic State, p. 111f). E. F. Carritt in Ethical and Political Thinking (Oxford, 1947), p. 156f writes, "Equality of consideration is the only thing to the whole of which men have a right, [and] it is just to treat men as equal until some reason, other than preference, such as need, capacity, or desert, has been shown to the contrary."

9. Ronald Dworkin, Taking Rights Seriously (Harvard, 1977), p. 184. In his response to Narveson's request for a supporting argument, Dworkin concedes that he has no argument to convince the skeptic regarding the "egalitarian plateau," but argues that rejecting it has such unwelcome consequences (such as class and caste systems), that we are justified in accepting it. He writes:

But it is...hard to conceive how any of us could think that it matters more, from any kind

> of objective standpoint, how his life goes than anyone else's, if I am right in supposing that each of us thinks that the course of his own life has intrinsic importance. you might want to say, for example, that it is more important how your life goes because you are a more virtuous person. But your convictions about the importance of how your life goes are too deep - too fundamental - to permit this. Your belief provides you with a reason to consider whether to be virtuous, and where virtue lies, which means that you think it important how your life goes for some reason that in this way precedes your virtue. If so, then you cannot say that it is more important how you live for any reason drawn from your merit or the merit of your life, and no other kind of reason can plausibly distinguish you from anyone else who has a life to lead." ("Comment on Narveson: In Defense of Equality" in Social Philosophy & Policy vol. 1: 1983, p. 35).

Dworkin is clearly correct in stating that we deeply value our lives and do so prior to imputing moral criteria, but he is wrong if he thinks this must be the basis of political and social arrangements. It is a large step from (1) "I matter most to myself" and "everyone else matters most to him or herself" to (2) everyone should matter equally to the State, for when we enter into society, we bring in contractual and/or utilitarian considerations which have normative features of their own. And these normative features may well specify that some interests count more than others, that virtue be rewarded differentially, and that some individual contributions or abilities be valued over others.

10. Kai Nielsen, Equality and Liberty (Rowman and Allenheld, 1985), p. 23.

11. Nielsen elsewhere speaks of his view that vast discrepancies in life prospects should be corrected as a "very basic considered judgment (moral intuition)," making his view identical with Dworkin's. Op. cit. p. 8. Nielsen may differ from Dworkin only in emphasizing the role of choice in adopting his intuition. The question remains: what is the basis of the intuition that equality is intrinsically a good thing? Is it a natural intuition constitutive of the human condition, so that those who lack it are fundamentally deficient? Is the product of a religious system which holds that all humans are made in the image of God with infinite value? Is it an aesthetic principle - similar to a sense of symmetry or unity? If for a secularist it is bad that humans are

unequal in ability, why is it not bad that humans and apes or dogs or mice are of unequal ability?

12. Kai Nielsen, Op. cit., p. 95.

13. Nozick in Anarchy, State and Utopia (Blackwell, 1874), p. ix. In this regard Jeffrie Murphy points out that Nozick's Lockean theory of original acquisition of property (Chapter 7) fails because it omits the theological assumptions that supported Locke's own theory. Nozick seeks to prevent hoarding of property first-comers, so he evokes "The Lockean Proviso" that there by "enough and as good left in common for others." His Lockean justification for this is that no one is worsened by this situation. But what Nozick fails to explain is why anyone should care whether anyone else's position is worsened. As Murphy says, "If nature is unowned and I am bound, why may I not simply say, 'Lucky me I got it all first and unlucky you who came too late' - and let it go at that? What right do you have with respect to unowned and morally virgin nature?" (Jeffrie Murphy, "Afterword: Constitutionalism, Moral Skepticism, and Religious Belief" in Constitutionalism, ed. Alan Rosenbaum (Greenwood Press, 1988), p. 247).

14. Tibor Machan, Individuals and Their Rights (Open Court, 1989), xxiv. For Machan's views on freedom of the will, see p. 14f.

15. David Gauthier, Morals By Agreement (Oxford University Press, 1986), pp. 55ff; 222. Gauthier seems to hold the Hobbesian idea that people are more or less equal in their ability to harm others, in their vulnerability to being harmed, and in their bargaining power, but I doubt this very much. The strong and clever can do more damage to others and have more to bring to the bargaining table.

16. Gregory Vlastos, "Justice and Equality," Social Justice, ed. Richard Brandt (Prentice-Hall, 1962), Reprinted in this volume.

17. Joel Feinberg, Social Philosophy (Prentice-Hall, 1973), p. 93f.

18. R. M. Hare, "Justice and Equality" in Justice and Economic Distribution, eds. John Arthur and William H. Shaw (Prentice-Hall, 1978). Thomas Nagel, "Equality" in Mortal Questions (Cambridge University Press, 1979) also holds such a position, though he is not a utilitarian.

19. For a cogent criticism of the uses of the doctrine of diminishing marginal utility for

egalitarian purposes, see Harry Frankfurt, "Equality as a Moral Ideal." Ethics 98 (1987). Reprinted in this volume.

20. Kai Nielsen, "On Not Needing to Justify Equality," International Studies in Philosophy, vol. XX/3 (1988), pp. 55 - 71.

21. Alan Gewirth, Reason and Morality (University of Chicago, 1978), "Epistemology of Human Rights" in Human Rights, eds. Ellen Paul, Fred Miller, and Jeffrey Paul (Blackwell, 1984), and Human Rights: Essays on Justification and Applications (University of Chicago, 1982).

22. Tom Nagel, A View from Nowhere (Oxford University Press, 1986) and Equality and Impartiality (Oxford University Press, 1991, p. 11.

23. Robert Nisbet, "The Pursuit of Equality" The Public Interest vol 35 (1974), 103-120.

24. Michael Sandel, Liberalism and the Limits of Justice (Cambridge University Press, 1982), p. 88.

25. Rawls, Op. cit., p. 505.

26. John Harsanyi, Essays in Ethics, Social Behavior and Scientific Explanation (Reidel, 1976) and Harry Frankfurt, "Equality as a Moral Ideal" Ethics vol 98.1 (Oct. 1987). Reprinted as reading 25 in this volume.

27. See for example Isaiah 2; 19:21-25; 60:1-5; Micah 4 and Revelations 21 and 22. See Lenn Evan Goodman's "Equality and Human Rights: The Lockean and Judaic Views" in Judaism (1984) for a similar interpretation as my own.

28. Parts of this paper were taken from "A Critique of Contemporary Egalitarianism" in Faith and Philosophy 8:4 (October 1991) and "Are Human Rights Based on Equal Human Worth?" in Philosophy and Phenomenological Research LII:3 (September 1992). I am indebted to Richard Arneson, Robert Audi, Donald Blackeley, Mane Hajdin, Tziporah Kasachkoff, John Kleinig, Paul Pojman, Steven Ross, William Rowe, Peter Simpson, and Robert Westmoreland for comments on previous versions of this paper.